IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

THURSDAY, THE 15TH NOVEMBER 2007 / 24TH KARTHIKA 1929

OP.No. 12608 of 1997(A)

PETITIONER:

K.A.RAJU, KAVOOR HOUSE,
THEKKEPPURAM, RANNY.

BY ADV. DR.K.B.MOHAMMED KUTTY (SR.)

RESPONDENTS:
---

1. THE ADDITIONAL SALES TAX OFFICER – 1,
PATHANAMTHITTA.

2. THE BOARD OF REVENUE (TAXES),
THIRUVANANTHAPURAM, REPRESENTED BY ITS SECRETARY.

3. THE DEPUTY TAHSILDAR,
RANNY.

BY ADV. SHRI.PRADEEP, GOVERNMENT PLEADER

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 15/11/2007 , THE COURT ON 15/11/2007 DELIVERED THE FOLLOWING:

OP NO. 12608/1997

ORDER ON CMP NO. 22508/1997 IN OP NO. 12608/1997.

DISMISSED.

15/11/2007 SD/- (C.N.RAMACHANDRAN NAIR, JUDGE)

APPENDIX

PETITIONER'S EXHIBITS

P1 : COPY OF THE ASSESSMENT ORDER ISSUED BY THE FIRST RESPONDENT TO THE PETITIONER DATED 11/03/96.

P2 : COPY OF THE PENALTY ORDER ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER DATED 01/07/96.

P3 : COPY OF THE REVISION ORDER ISSUED by the DEPUTY COMMISSIONER, SALES TAX, QUILON TO THE PETITIONER DATED 05/09/1996.

P4 : COPY OF THE REVISION ORDER ISSUED by the SECOND RESPONDENT TO THE PETITIONER DATED 02/04/1997.

P5 : COPY OF THE RECEIPT ISSUED BY THE DEPARTMENT OF TELECOMMUNICATION.

P6 : COPY OF THE ADJOURNMENT PETITION FILED BY THE PETITIONER BEFORE the 2ND RESPONDENT DATED 20/03/1997.

P7 : COPY OF THE DEMAND NOTICE NO. ST-31-97 ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER DATED JULY 1997.

// TRUE COPY //

PA TO JUDGE.

jg

C.N.RAMACHANDRAN NAIR, J.

O.P. No. 12608 of 1997

Dated, this the 15th day of November, 2007

J U D G M E N T

Petitioner is challenging Ext.P4 order of the Board of Revenue confirming penalty levied on the petitioner under Section 45A of the KGST Act. Petitioner, who was a dealer in Indian Made Foreign Liquor during 1994-95, did not account full purchases of liquor and on detection of the quantity unaccounted, the officer levied penalty at double the amount of tax by adding 30% towards gross profit to the purchase turn over. However, petitioner has remitted the tax as demanded. Taking in to account the circumstances, including the payment of tax, the Deputy Commissioner cancelled the penalty. However, the Board of Revenue/ the Commissioner, in suo motu revision cancelled the first revisional authority's order and restored the penalty against which this original petition is filed.

2. I heard learned senior counsel appearing for the petitioner and learned Government Pleader for the respondents.

3. Petitioner's case that no penalty could be levied is unacceptable because but for detection of unaccounted quantity purchased turnover would have escaped assessment. Therefore, the levy of penalty, in principle, is upheld. However, I do not think

it is a fit case for levying maximum penalty because the purchase suppression is not very high and petitioner has voluntarily paid the tax on assessment. In the circumstances, I modify Ext.P4 by reducing the penalty to equal the amount of tax i.e. 50% of the penalty levied.

This writ petition is disposed of as above.

(C.N.RAMACHANDRAN NAIR, JUDGE.)

jg